

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

RECEIVED

SEP 17 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

MM Docket No. 99-25

Creation of a Low)
Power Radio Service)

RM-9208

RM-9242

To: The Commission

**REPLY COMMENTS OF
MEGA COMMUNICATIONS, L.L.C.**

Mega Communications, L.L.C. ("Mega"), by its attorneys, hereby submits the following Reply Comments regarding the Commission's proposed new low power FM ("LPFM") service.¹ The comments filed in this proceeding affirm Mega's concerns that LPFM is not only unnecessary, but poses a real threat to the continued growth of *existing* minority broadcast voices, contrary to the very policy goals that the Commission is seeking to serve.² Indeed, numerous minority broadcasters have filed comments opposing the creation of LPFM. The Commission must now reconsider its ill-advised proposal. It is LPFM service, rather than consolidation of ownership, which poses the greatest threat to minority broadcast services today.

¹See *In the Matter of Creation of a Low Power Radio Service*, Notice of Proposed Rulemaking, 14 FCC Rcd 2471 (1999) ("NPRM").

²See Comments of Mega Communications, filed August 2, 1999.

No. of Copies rec'd
List ABCDE

014

Minority Broadcast Voices *Already* Exist

Mega's original comments in this proceeding called upon the Commission to fully recognize the extent to which minority program services are *already* on the air, contrary to the apparent assumptions underlying the NPRM. Mega, a Spanish-language broadcaster in five markets, is itself a good example of the recent growth of such existing services.

Mega's sentiments were echoed by the comments of Willis Broadcasting Corporation ("Willis"), whose owner, Bishop L.E. Willis, an African-American and pioneering minority broadcaster, owns or controls 39 urban, suburban and small market AM and FM stations. Willis explained that numerous opportunities already exist for broadcast ownership, as many stations may be bought for reasonable or even "bargain basement" prices.³ Clearly, Willis is in a position to know first hand what opportunities exist for minority broadcasters. Moreover, Willis pointed to the explosive growth in the number of media outlets, including the "new media,"⁴ the existence of which obviates the need for LPFM.

The comments filed by other broadcasters point out that minority program services are provided not only by minority-controlled stations, but also by an array of ethnic programmers which commonly purchase blocks of time on local stations. For example, Z-Spanish Media Corporation ("Z-Spanish"), another Spanish-language broadcaster, emphasized that individuals, churches and community organizations -- all intended beneficiaries of LPFM -- currently have the ability to purchase affordable blocks of airtime on radio stations across the country, including several of

³Willis Comments at 6.

⁴*Id.* at 7-8.

Z-Spanish's own stations.⁵ It reported that every major market has at least two *full-time* block programming stations, with a number of additional stations selling block time during specific dayparts. According to Z-Spanish, even more broadcast time is available for such programming in medium and smaller sized markets, at even lower prices.⁶

Similarly, Mega's sister company, The Freedom Network, L.L.C. ("Freedom"), reported that its stations in five markets currently broadcast Spanish, Vietnamese, Russian, Indian, Asian, African and Caribbean programming from a number of independent ethnic producers that use blocks of its time.⁷ Freedom also pointed out that this is an important way in which minority voices are gaining experience in program production, broadcasting and sales.⁸ Indeed, Mega's President, Alfredo Alonso, began his broadcast career leasing air time on a New York City FM station for a program he produced, hosted and sold advertising on. Seven years later, he purchased an AM station in Minneapolis. These same opportunities exist today.

Mega And Other Existing Minority Broadcast Services Will Be Harmed By Low Power FM

Mega's Comments also emphasized the economic harm that a new LPFM service will cause to existing minority broadcast voices, which often lack the resources and superior technical facilities of the national broadcast conglomerates to compete with thousands of new LPFM outlets. Other commenters have echoed those concerns as well. For example, the Minority Members of the North

⁵Z-Spanish Comments at 2.

⁶*Id.* at 3.

⁷See Letter from Otto Miller, President, The Freedom Network, L.L.C., to Magalie Roman Salas, Secretary, FCC, dated July 30, 1999.

⁸*Id.* at 1.

Carolina Association of Broadcasters (“MMNC”), who are the licensees of six radio stations, wrote that “[t]he threat that LPFM poses to existing minority and women broadcasters is palpable.”

MMNC explained that:

If LPFM is implemented as proposed, many minority-owned or operated stations could lose a significant portion of their audience, and, consequently, the advertising dollars that keep these community radio stations on the air.

Even AM broadcasters . . . will be devastated by LPFM, for the advertising pie in small markets simply cannot be sliced into any more pieces.⁹

MMNC further observed that “the Commission’s calculus appears to prize so-called ‘new’ opportunities for minority *would-be* broadcasters over the sweat and equity already invested by *existing* minority broadcasters.”¹⁰ Similarly, Willis predicted that the implementation of LPFM will “create economic instability in the radio industry, cause stations to lay off employees (including minority and female employees), suspend operations, go bankrupt or go dark.”¹¹ Moreover, small broadcasters share the same concerns as these minority broadcast voices.¹²

This is a very real danger for Mega. Although its stations are the leading Spanish-language radio outlets in each of their markets, the Latino population in each is relatively small. Thus, Mega’s share of the total radio listeners in each market is no greater than one percent, although advertisers in these markets are beginning to learn of Mega’s presence and recognize the Spanish-speaking audience and consumers. If an LPFM cherry picks the Latino population in one of Mega’s markets,

⁹MMNC Comments at 3.

¹⁰*Id.* at 2 (emphasis in original).

¹¹Willis Comments at 23.

¹²*See, e.g.,* Comments of Prettyman Broadcasting Company.

however, so that Mega's share falls by just half of one percent, it would no longer be economically feasible for Mega's stations to operate as Spanish-language outlets. Thus, existing minority voices would be driven from full power radio stations in such markets, while minority formats would be relegated to low power and perhaps only secondary status.

LPFM Will Hurt Local Service Generally

LPFMs will harm not only minority broadcast service, but local service generally. As detailed in a study commissioned by the National Association of Broadcasters ("NAB Study"),¹³ established stations will suffer a dramatic reduction in the audience that they currently attract, in large part because of the "cacophony" of LPFM voices.¹⁴ A decrease in audience ratings necessarily will reduce the amount that advertisers are willing to spend on radio outlets, which, in turn, will cause radio stations' operating budgets to be reduced. The features of existing full-service stations -- continuous upgrades to state-of-the-art equipment, well-trained production and on-air staff, and "live" remotes from shopping malls and high school football games -- will be greatly diminished, because smaller and minority-owned broadcasters who typically do not enjoy the same economies of scale as large station group owners will not have the financial wherewithal to continue these practices in the face of declining revenues. Accordingly, the listening public will be deprived of the vital role that these existing radio stations play.¹⁵

¹³John Haring and Harry M. Shooshan III, *LPFM: The Threat to Consumer Welfare*, (Strategic Policy Research, July 21, 1999).

¹⁴*Id.* at 17.

¹⁵*Id.* at 27.

The Threat of LPFM Interference Is Even Greater For Minority and Small Broadcasters

Broadcasters of all sizes have expressed their concern with the interference likely to be caused by LPFM stations. But smaller broadcasters and minority operators are likely to be the most vulnerable to such interference, because they typically operate less powerful FM stations with less desirable facilities than the national radio conglomerates. Even the minority-controlled Radio One, Inc., which enjoys the financial resources of a publicly-owned corporation, observed that many of its stations have less powerful or even inferior signals, which will be subject to unacceptable risks of interference from LPFM.¹⁶

As Mega's own Comments reported, it began to acquire FM properties only in the past year. The FM stations with the greatest coverage of its markets remain beyond Mega's economic means. Thus, while Mega has begun to extend its Spanish-language service to the more popular FM band, the FM stations it is able to acquire will likely be particularly vulnerable to interference from LPFM outlets. Thus, LPFM will hinder Mega's plans to extend its minority program service to the more desirable FM band in each of its markets.

The adoption of LPFM also threatens existing "low power" minority program services. The Broadcasters to Preserve Existing Public Service ("BPEPS"), a coalition of small business and minority broadcasters, point out that "existing low power FM stations" -- meaning FM translators and boosters -- "promote the public interest by providing valuable services which listeners rely upon,"

¹⁶Comments of Radio One at 3. Similarly, Hispanic Broadcasting Corporation expressed concern that LPFM will wreak havoc on the technical integrity of the FM band and will unacceptably delay the deployment of digital radio. Hispanic Comments at 4.

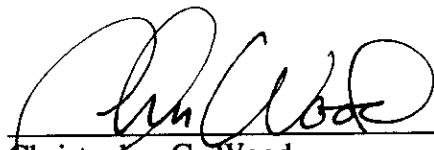
including issue-responsive and news-oriented urban, minority and foreign language programming.¹⁷ BPEPS opposes any implementation of LPFM that would increase interference to existing translators and boosters.

In short, the record in this proceeding demonstrates that the creation of LPFM will not promote minority voices or increase service to local minority communities. On the contrary, it will harm existing minority program services, as well as other smaller operators. The Commission must now reconsider its ill-advised proposals.

Respectfully submitted,

MEGA COMMUNICATIONS, L.L.C.

By:



Christopher G. Wood
Mark B. Denbo

Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, DC 20036
202/939-7900

Its Attorneys

Date: September 17, 1999

105353.0

¹⁷BPEPS Comments at 2.

CERTIFICATE OF SERVICE

I, Joan M. Trepal, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "Comments of Mega Communications, L.L.C.," was served this 17th day of September, 1999, via first-class mail, upon the following:

*Hon. William Kennard
Chairman
Federal Communications Commission
The Portals II
445-12th Street, SW, Room 8-B201H
Washington, DC 20554

*Hon. Gloria Tristani
Commissioner
Federal Communications Commission
The Portals II
445 Twelfth Street, SW -- Room 8-C302C
Washington, DC 20554

*Hon. Susan Ness
Commissioner
Federal Communications Commission
The Portals II
445 Twelfth Street, SW -- Room 8-B115H
Washington, DC 20554

*Paul Gordon
Mass Media Bureau
Federal Communications Commission
The Portals II
445-12th Street, SW, Room 2-C223
Washington, DC 20554

*Hon. Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
The Portals II
445 Twelfth Street, SW -- Room 8-A302C
Washington, DC 20554

*Bruce Romano
Mass Media Bureau
Federal Communications Commission
The Portals II
445 12th Street, SW, Room 2-C267
Washington, DC 20554

*Hon. Michael K. Powell
Commissioner
Federal Communications Commission
The Portals II
445 Twelfth Street, SW -- Room 8-A204C
Washington, DC 20554

Lori J. Holy, Esq.
National Association of Broadcasters
1771 N Street, NW
Washington, DC 20036-2891

*By Hand

Wade H. Hargrove, Esq.
Counsel for MMNC
Brooks, Pierce, McLendon,
Humphrey & Leonard, L.L.P.
P.O. Box 1800
Raleigh, NC 27602

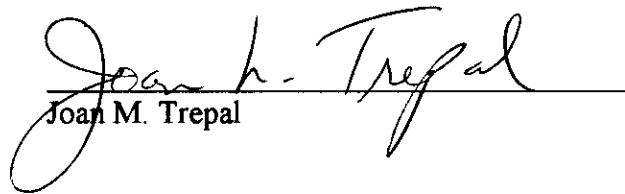
Charles R. Naftalin, Esq.
Counsel for BPEPS
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, NW
Washington, DC 20036

Margaret L. Miller, Esq.
Counsel for Prettyman
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036

Amador S. Bustos
CEO and President
Z-Spanish Media Corporation
1436 Auburn Boulevard
Sacramento, CA 95815

Antoinette Cook Bush, Esq.
Counsel for Radio One
Skadden, Arps, Slate, Meagher
& Flom, LLP
1440 New York Avenue, NW
Washington, DC 20005-2111

Otto Miller
President
The Freedom Network, L.L.C.
301 Guinea Road
Stamford, CT 06903


Joan M. Trepal